IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8951 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NITINBHAI BALVANTBHAI VORA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8951 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR MK PATEL, AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 30/01/2003

ORAL JUDGEMENT

#. The District Magistrate, Ahmedabad, by his order dated 11.7.2000, detained the petitioner under Section

3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the Act" for short). The order of detention is placed at page 19 in the compilation. Even though the detention order is dated 11.7.2000, the same was ultimately executed on 26.8.2000. Since the petitioner was not traceable, it was not possible to detain him after the order was passed and ultimately, the authority was successful in arresting him on the aforesaid date.

#. Along with the detention order, the petitioner was served with the grounds of detention. As per the said grounds, the petitioner has tried to divert solvent to other people in an illegal manner, instead of using the same for industrial purpose. He has misused the solvent by selling the same to some unauthorised people by charging high price, though the petitioner was required to use the said solvent for industrial purpose. It is alleged against the petitioner that the petitioner has tried to help one Narayan Tukaram Badi, who is the owner of one Atlas Petrochemicals. The particulars regarding activities of the petitioner are highlighted in the detention order. Ultimately, in order to prevent the petitioner from indulging in such illegal activities, the said order is passed against the petitioner by way of preventive detention.

#. At the time of hearing of this petition, Mr.Prajapati, learned advocate for the petitioner-detenu, argued that the main culprit one Narayan Tukaram Badi, who was also detained under the provisions of the Act, has been released by this Court, as, certain documents were not placed before the detaining authority by the sponsoring authority in connection with certain transactions undertaken by Mr.Badi with the present petitioner. It is further stated that the detention order against Mr.Badi is revoked by this Court on the ground that subjective satisfaction of the authority is vitiated, as, certain documents were not supplied to the detaining authority by the sponsoring authority. It is also submitted that, even the petitioner has asked for necessary documents, as well as, he has made the prayer for revocation of the detention order by making a representation dated 30.8.2002 to the Chief Minister, which is at page 35 in the compilation. It is submitted that the said representation is not dealt with by the State Government.

#. Mr.Patel, learned AGP, has fairly stated that the representation made by the petitioner was received by the

office of the Chief Minister, however, the same was sent to the Home Department on 2.9.2002. He frankly stated that, thereafter, the said representation is not traceable and that is how the representation is not decided by the authority, as, now it is not available and the same is lost in the department. It is required to be noted that, stand taken by the State Government in the affidavit-in-reply is that the said representation is not received by the State. However, that reply is filed by the Civil Supplies Department. Mr.Patel has made the aforesaid statement after taking instructions from the concerned Officer, who is present in this Court.

#. Since the fact that the representation of the petitioner is not decided is not in dispute, there is no alternative, but to set aside the detention order, as, at least, decision was required to be taken on the representation of the petitioner one way or the other. Under the circumstances, this petition is required to be allowed, as, the representation of the petitioner is not decided by the State Government, as indicated above.

#. In view of the above position, this petition is allowed. The order of detention dated 11.7.2000 is quashed and set aside. The detenu Shri Nitinbhai Balvantbhai Vora is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(P.B.Majmudar,J)
(pathan)